REMARKS

Claims 1-26 are pending. By this paper, no claims have been amended, and no new matter has been added.

Claim Rejections Under 35 U.S.C. §103

Claims 1-3, 8-16 and 21-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pieper (US 2003/0005419) in view of Cain et al. ("Portable Software Library Optimization", 2/1998).

Claims 4-7 and 17-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pieper in view of Cain and Kum et al. (0-7803-5041-3/99, IEEE).

Applicants respectfully traverse.

Independent claim 1 recites the following limitations:

optimizing the software program such that a resulting first optimized form of the software program is completely independent of the target processor and is at least partially coded in the high-level language, determining a first performance profile for the first optimized form of the software program, and comparing the first performance profile with the performance objectives.

Applicants respectfully submit that Pieper in view of Cain and Kum does not disclose or even suggest such limitations.

In page 8, section 7, the Action asserts that Applicants have changed the phrase "at least partially independent" to "completely independent" in an attempt to overcome the cited Pieper reference. According to the Action, the term "completely independent" does not appear anywhere in the Applicants' specification. However, Applicants respectfully disagree.

In page 6, lines 8-9, Applicants clearly state that the programming language is one that is completely portable between all probable processing targets. In general, the term "portable" means "machine independent". Hence, the phrase "completely portable" may be interpreted by those skilled in the art as "completely machine independent" or "completely independent", as recited in the present claims. Therefore, since the present claims recite the term "completely

independent" and the specification supports this term by reciting the term "completely portable", the claims should be considered to differentiate over the cited Pieper reference.

According to Pieper, in paragraph 30, the optimized code 60 output by the optimization processes 58 is in an intermediate level program code language that is <u>substantially independent</u> of the architecture of target processor 12. Since Pieper specifically discloses that the optimized code 60 is <u>substantially independent</u> of the architecture of target processor 12, Pieper explicitly discloses that a portion or part of the optimized code 60 is <u>not</u> independent. This assertion is conceded by the previous Office Action, dated March 6, 2006, in page 8, section 7.

In contrast to Pieper, independent claim 1 requires optimizing the software program such that a resulting first optimized form of the software program is <u>completely independent of the target processor</u> and is at least partially coded in the high-level language. *Support for this limitation of independent claim 1 can be found in the Applicants' specification, for example, in page 6, line 4 to page 7, line 18 and, in particular, page 6, lines 7-8.*

Pieper does not disclose or even suggest this limitation of the present claim. Instead, as noted above, Pieper explicitly teaches that a portion or part of the optimized code 60 optimized by optimization processes 58 is <u>not</u> completely independent of the target processor 12 because Pieper specifically teaches that the optimized code 60 is <u>substantially independent</u> of the architecture of a target processor 12. There is no teaching or suggestion in Pieper that a first optimized form of the software program is <u>completely independent</u> of the target processor and is at least partially coded in the high-level language, as required by the present claims.

The ancillary Cain and Kum references do not remedy the deficiencies of Pieper as discussed above with reference to independent claim 1.

For at least these reasons, it is respectfully submitted that independent claim 1 is not anticipated by the cited references.

For at least these same reasons, it is respectfully submitted that independent claim 14 is likewise not anticipated by the cited references.

Since claims 2-13 and 15-26 depend from independent claims 1 and 14, respectively, these dependent claims are also not anticipated and should be considered allowable over the cited references.

CONCLUSION

Based on the foregoing, all claims are believed allowable, and an allowance of the claims is respectfully requested. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned at the number listed below.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Bingham McCutchen's Deposit Account No. **50-2518**, referencing billing number **7017922001**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Bingham McCutchen's Deposit Account No. **50-2518**, referencing billing number **7017922001**.

Respectfully submitted,

Bingham McCutchen LLP

Date: <u>November 1, 2006</u>   By: _____

Peter C. Mei

Registration No. 39,768

Three Embarcadero Center
San Francisco, CA 94111
Telephone: (650) 849-4870
Facsimile: (650) 849-4800